



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/715,441	11/19/2003	J. Donald Hill	018880.0147	3943
24735 7590 06/19/2008 BAKER BOTTS LLP C/O INTELLECTUAL PROPERTY DEPARTMENT THE WARNER, SUITE 1300 1299 PENNSYLVANIA AVE, NW WASHINGTON, DC 20004-2400				
EXAMINER SONNETT, KATHLEEN C				
ART UNIT 3731		PAPER NUMBER		
NOTIFICATION DATE 06/19/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

usptocorrespondence@bakerbotts.com
darlene.hoskins@bakerbotts.com
oneka.davis@bakerbotts.com

Office Action Summary

Application No.

10/715,441

Applicant(s)

HILL ET AL.

Examiner

KATHLEEN SONNETT

Art Unit

3731

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 March 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 13-19, 22, 34 and 35 is/are pending in the application.
- 4a) Of the above claim(s) 34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 13-19, 22 and 35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date 4/29/2008
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. Claims 13-19, 22, 34, and 35 are pending. Claim 34 is withdrawn.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claim 35 is rejected under 35 U.S.C. 102(b) as being anticipated by Bolduc et al. (US 6,193,734). Bolduc et al. discloses a method for delivering a coupler into a blood vessel, the coupler comprising a fixed saddle (top circle of 54a; fig. 27), a channel (through bottom circle of 54a) wherein the channel comprises a first end connected to the saddle and a second end, a tissue clamp (82A) positioned around the channel and a flange formed adjacent to the second end of the channel (ends 84a), the method comprising the steps of engaging the channel of the coupler, engaging the tissue clamp and bending the tissue clamp away from the saddle (see fig. 19), making an incision into the blood vessel (aortic punch; col. 6 ll. 40-44), delivering the coupler into the blood vessel through the incision, securing the saddle to the blood vessel, and releasing the tissue clamp so that the clamp conforms to the fixed saddle (fig. 27; col. 11, ll. 4-9).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Art Unit: 3731

5. Claims 13-19 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Berreklouw (WO 00/24339) in view of Akin et al. (US 6,458,140) and Halling (US 4,779,901). Berreklouw discloses a method of connecting two conduits comprising the steps of positioning a first saddle of a first coupler having a first channel within a first conduit so that a portion of the first coupler is positioned on an inside wall of the first conduit and another portion of the first coupler is positioned on an outside wall of the first conduit, positioning a second saddle of a second coupler having a second channel within a second conduit so that a portion of the second coupler is positioned on an inside wall of the second conduit, and another portion of the second coupler is positioned on an outside wall of the second conduit, clamping the first conduit to the first saddle of the first coupler, clamping the second conduit to the second saddle of the second coupler and connecting the first and second coupler (see fig. 16 which shows the claimed structure positioned within two conduits with the wall of each conduit clamped between two portions a coupler). Berreklouw fails to disclose a first flange on the first coupler in alignment with a second flange on a second coupler wherein the method includes mating surfaces of the couplers and crimping a clamping ring around the flanges to secure them to each other, the first and second flanges being separated from the first and second conduits, respectively.
6. However, Akin et al. teaches that it is well known to provide a longer flow channel between two vessels that are being joined by a side-to-side anastomosis. Akin et al. discloses a pair of couplers used during an anastomosis procedure, wherein the couplers have portions which are spaced from their respective conduits (see for example figs. 9-11b) due to the length of the portions of the couplers extending between the two vessels being joined (compared to embodiment shown in fig. 7d). These lengthened portions together form a flow channel or shunt. It would have been obvious to one skilled in the art to have modified Berreklouw to increase the length of the couplers so that they form a flow channel as taught by Akin et al. Akin et al.

teaches providing a ring (122; fig. 11b) around the mating surfaces of the couplers but does not disclose providing two flanges on the couplers and crimping a clamping ring around the flanges. However, clamping rings around mating flanges is a well known technique for joining two conduits together as illustrated by Halling (see fig. 1, 2; "88" around "24" and "58"). It would have been well within the purview of one skilled in the art to change the mating structure of the device of Berreklouw to increase the length of the couplers such that the two vessels are spaced apart and a longer flow channel is formed between them as taught by Akin et al. as well as adding mating flanges held together by a clamping ring as taught by Halling as such a modification would have been considered a substitution of one known method of coupling two conduits for another known method of coupling two conduits. Furthermore, it is well known to crimp down a clamping ring to ensure that the ring will not be displaced.

7. Regarding claims 14 and 15, the method includes making a first incision and positioning the first saddle within the first conduit (p. 20, ll. 25-27). Berreklouw only expressly discloses making one incision (although two holes are shown in fig. 16) but because claims 15 and 14 each depend from 13, the designation of which conduit, saddle, and coupler is "first" and which is "second" can be changed so that the incision is made in the first or the second conduit.

8. Regarding claims 16 and 17, the step of clamping the first conduit to the first saddle comprises the step of heating a first tissue clamp to a transition temperature such that the first tissue clamp secures the first conduit between the first tissue clamp and saddle (p. 10, line 24 – p. 11, line 4, and p. 21, ll. 25 - p. 22, ll. 4, which discloses that the flanges of the devices of Berreklouw may be shape memory such that, when heated, they change configuration, locking the device in place).

Art Unit: 3731

9. Regarding claims 18 and 19, Berreklouw discloses legs formed on the saddles that are bent outward (extended in an outward direction) so that the first and second conduits are secured between the first saddle and coupler and the second saddle and coupler, respectively.

10. Regarding claim 22, Berreklouw fails to disclose connecting the first and second couplers before the steps of positioning the first and second saddle in the first and second conduit, respectively. However, Berreklouw does disclose that the two couplers could be made as an integral piece, which would result in the two couplers being connected before the first and second saddles are positioned within the first and second conduits. Furthermore, applicant has not disclosed any advantage gained, purpose served, or problem solved by joining the couplers together before the positioning step as opposed to joining the couplers after the positioning step. One skilled in the art would have expected either order of the steps to perform the function of joining two conduits together equally well. Therefore, it would have been prima facie obvious to modify Berreklouw to connect the first and second couplers before the steps of positioning the first and second saddles in the first and second conduits because such a modification would have been considered a mere design consideration that fails to patentably distinguish the claimed invention from the prior art of Berreklouw.

Response to Arguments

11. Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to KATHLEEN SONNETT whose telephone number is (571)272-5576. The examiner can normally be reached on 7:30-5:00, M-F, alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Todd Manahan can be reached on 571-272-4713. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Application/Control Number: 10/715,441

Page 7

Art Unit: 3731

/Todd E Manahan/

Supervisory Patent Examiner, Art Unit 3731